IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8186 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YUNUSBHAI SULTANBHAI @ ANWARBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8186 of 2001

MR DJ BHATT for Petitioner No. 1

MR VIPUL PANCHOLI Ld. APP for Respondent No. 1

MR ASHISH M DAGLI for Respondent No. 2

MR YOGESH S LAKHANI for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 04/02/2002

ORAL JUDGEMENT

Heard Mr. DJ Bhatt learned counsel for the petitioner and Mr. Pancholi ld. APP for the respondent no. 1-State.

Rule. Mr. Pancholi learned APP waives service of rule on behalf of respondent no. 1-State. With the consent of learned counsel for both the sides, this matter is taken up for final hearing.

The petitioner has prayed for quashing of the complaint registered by Police Sub Inspector, Bhavnagar A Division Police Station on 17.9.2001, being Crime Register No. II-755 of 2001, for the alleged violation of notification issued by the District Magistrate, Bhavnagar and the complaint is registered for the offence punishable under sec. 188 of IPC.

The point taken by the petitioner is that when the notification is issued by the District Magistrate, Bhavnagar then either that very officer or an officer authorized by him only can institute criminal complaint or filed complaint for the offence punishable under sec. 186 or 188 of IPC. It is apparent that the complaint is filed by the Depot Manager, S.T. Depot, Bhavnagar and the same is registered by Police Sub Inspector. A grievance of learned counsel for the petitioner is that in view of provisions of sec. 195 of Cr.P.C., on the strength of the complaint filed by Depot Manager, the court cannot take cognizance and, therefore, the complaint cannot be sustained in the eye of law. Mr. Bhatt has drawn attention of this court on a decision in Criminal Revision Application No. 437 of 1997 dated 18.9.1997 in the case of Jagdishsinh J Zala vs. State of Gujarat (Coram: NJ Pandya, J.). This decision is squarely covers the present case, however, Mr. Bhatt has placed reliance on a case reported in 1994(4) SCC p. 95. Ld. APP Mr. Pancholi has fairly submitted that the ratio of the decision of Apex Court would squarely covers the present case and, therefore, the complaint shall have to be quashed.

In the result, this application is allowed. The complaint being CR No. II-755/2001 registered before the Bhavnagar-A Division Police Station dated 17.9.2001 against the petitioner, is hereby quashed and set aside.

Rule made absolute to the aforesaid extent only. DS permitted.

(C.K. BUCH, J.)
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